



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2009

Ms. Kelly J. Shook
Schwartz & Eichelbaum
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2009-16591

Dear Ms. Shook:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 362055.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for six categories of information pertaining to a named district employee. You state you have released some responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the grade and credit information you highlighted in the submitted information is excepted from disclosure under section 552.102(b) of the Government Code. This section excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). You marked grade and credit information in two documents, only one of which is a transcript from an institution of higher education. Upon review, we conclude this transcript is subject to section 552.102(b) of the Government Code. The other document that contains highlighted grade and credit information is an evaluation report that lists United States credit equivalencies for courses taken outside this country. Because this report is not a transcript

from an institution of higher education, we conclude section 552.102(b) is inapplicable to this document.

You next raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. You state Exhibits C and D contain documents subject to section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of the registration documentation of aliens under section 1301 of the United States Code and provides:

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

(1) pursuant to section 1357(f)(2) of this title, and

(2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). Exhibit C consists of an I-94 form, which is listed in section 264.1(a) of title 8 of the Code of Federal Regulations as a registration form. 8 C.F.R. § 264.1(a) (providing detailed list of prescribed registration forms). Exhibit D consists of a permanent resident card. Such cards are listed in section 264.1(b) of title 8 of the Code of Federal Regulations as documents that constitute evidence of registration. 8 C.F.R. § 264.1(b). We therefore conclude the submitted I-94 form and permanent resident card are registration records subject to section 1304(b) of title 8 of the United States Code.

You claim the Texas driver's license and driver's license number in Exhibit E are excepted by section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130 (a)(1), (2). Thus, we agree the Texas driver's license information we marked in Exhibit E is subject to section 552.130.

You next claim the number you highlighted in Exhibit F is subject to section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to ... obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer

originated solely by paper instrument.” *Id.* § 552.136(a). Although you raise section 552.136, you have not provided any arguments explaining the applicability of this exception to the highlighted number in Exhibit F. *See id.* § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, this number may not be withheld under section 552.136 of the Government Code.

TEA’s request states it is seeking this information under the authority provided to the State Board for Educator Certification (“SBEC”) by section 249.14 of title 19 of the Texas Administrative Code.¹ Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits TEA to obtain information that is otherwise protected by the exceptions discussed above.

Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.4. Section 249.14 provides in relevant part:

(a) [TEA] staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the [SBEC] denying relief to or taking disciplinary action against the person or certificate.

...

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

19 T.A.C. § 249.14(a), (c). In this case, the requestor states she is investigating alleged improper conduct by the named district employee and that she needs to review the requested records to determine whether measures need to be taken against the employee’s teaching credentials. Thus, we find that the requested information is subject to the general right of access afforded TEA under section 249.14. However, because some of the requested information is specifically protected from public disclosure by the statutes and exceptions discussed above, we find that there is a conflict between these statutes and exceptions and the right of access afforded to TEA investigators under this section.

¹Chapter 21 of the Education Code authorizes SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators. *See* Educ. Code § 21.031(a). Section 21.041 of the Education Code states that SBEC may “provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code.” *Id.* § 21.041(b)(7). Section 21.041 also authorizes SBEC to “adopt rules as necessary for its own procedures.” *Id.* § 21.041(a).

With regard to the submitted I-94 form and permanent resident card, we note these records are confidential pursuant to section 1304 of title 8 of the United States Code. As a federal law, section 1304 preempts any conflicting state provisions, including section 249.14 of the Texas Administrative Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Accordingly, we find that, notwithstanding section 249.14 of the Texas Administrative Code, the submitted I-94 form and permanent resident card are confidential pursuant to section 1304 of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

Next, we address the information that is excepted from public disclosure pursuant to sections 552.102 and 552.130. Usually, where general and specific statutes are in irreconcilable conflict, the specific provision prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov't Code § 311.026(b); City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Although these exceptions under the Act are more specific to the information at issue than TEA's general right of access under section 249.14, a statutory right of access prevails over the Act's exceptions to disclosure unless those exceptions specifically authorize release under certain circumstances to particular entities. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act); see generally Attorney General Opinions GA-0055 at 3-4 (2003), DM-353 at 4-5 n.6 (1995) (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 at 5 (1986) ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others")*. Section 552.130 of the Government Code has its own access provision specifically governing release of the Texas motor vehicle record information it protects. Gov't Code § 552.130(b). The release provision of section 552.130 does not permit access in this case. Therefore, notwithstanding the provisions of section 249.14, the district must withhold the information we marked that is excepted from disclosure under section 552.130 of the Government Code. However, because section 552.102 of the Government Code does not have its own release provision, we conclude TEA's statutory right of access prevails over this general exception. You also redacted the named employee's social security number from the submitted information pursuant to section 552.024 of the Government Code, which authorizes a governmental body to withhold a current or former employee's social security number from public release under section 552.117(a)(1), without the necessity of requesting a decision from this office under certain circumstances.²

²Although you cite to section 552.026 for this proposition, this section does not deal directly with the redaction of social security numbers. Accordingly, we understand you redacted these numbers under section 552.024.

However, like section 552.102, section 552.117 does not have its own access provision and thus is a general exception under the Act. Accordingly, we conclude the requestor's right of access to the redacted social security number overcomes this exception. Thus, TEA has a right of access to the named employee's transcript and social security number.

In summary, the district must withhold the submitted I-94 form and permanent resident card pursuant to section 552.101 of the Government Code in conjunction with section 1304 of title 8 of the United States Code. The district must also withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. The district must release the remaining information, including the redacted social security number and transcript.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 362055

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note that because the requestor has a special right of access to some of this information pursuant to section 249.14 of title 19 of the Texas Administrative Code, the district must again seek a decision from this office if it receives another request for the same information from another requestor.